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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,698	03/03/2004	Kosei Takano	1341.1195	4320

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EXAMINER	
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ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,698	TAKANO ET AL.	
	Examiner	Art Unit	
	Kang Hu	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *3/3/04*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/3/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

2. Claims 1, 11 and 20 are objected to because of the following informalities: the preamble of claims 1, 11 and 20 recites "a customer device of a customer with information on a product", it could be stated much simpler by saying "a customer device with information on a product". Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In independent claims 1, 11 and 20, an "apparatus", "method" and a "computer program" are recited, however, it does not appear that any apparatus or system exists within claim 1. It appears that the system and method would reasonably be interpreted by one of ordinary skill in the art as software, per se. Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change

in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760(claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer- readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

The dependent claims 2-10, and 12-19 fail to resolve the deficiencies of claims 1 and 11 and therefore are also not statutory.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Chan et al. (US 6,692,256 B2).

Re claims 1, 11 and 20 Chan discloses the broadly claimed invention of an apparatus and method for providing, via a network (col 6, lines 15-16), a customer device of a customer with information on a product that requires the customer to follow a predetermined operation procedure (Abstract: tutorial system wherein software product training is provided interactively by guiding the user, through one or more example or applications that can be created in and or using the product) to operate a predetermined function, comprising: an education giving unit that gives an education on the operation procedure of the product to the customer through the customer device; and an education history

storing unit that stores a progress of the education given to the customer as a history of the education given (col 14, lines 36-52; col 15, lines 1-29).

Chan further discloses:

Re claims 2 and 12, the apparatus and method, wherein the education giving unit gives the education according to a product category to which the product belongs (col 3, lines 1-5, lines 45-50).

Re claims 3 and 13, the apparatus and method, wherein the education giving unit first gives an education that is common to all products in the product category, followed by an education that is specific to the product understood as the content of the education is first broad then more specific, i.e. learning a math concept, first you learn the basic general math, then you learn how to use that concept in solving problems. It is a well-known concept in the art of education.

Re claims 4 and 14, the apparatus and method, wherein the education-giving unit gives the education according to the history stored (the tutorial will begin where the user left-off; col 14, lines 35-53 also according to the user's performance col 15, lines 1-6)

Re claim 10, the apparatus according to claim 1, wherein the product is an application software and the product category is a computer (abstract, cols 3 and 4).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 5-9 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chan et al. (US 6,692,256 B2).

Re claim 5, the apparatus according to claim 1, wherein the education giving unit conducts a test to check how much the customer has understood the operation of the product is obvious to one of ordinary skill in the art of any education system, the system would evaluate the user's performance according to the assessment provided to the user. In this instance, Chen teaches the use of monitoring functionality to ensure that user interactions within the tool conform to or aligns with the tutorial objectives and constrains.

Re claims 6-9, it would also be obvious to one of ordinary skill in the art that an education system would include a benefit offering unit that would offer a reward to the user upon completing the tutorial or an assessment of such tutorial, such embodiment would normally include a certificate of completion, points to show that the user has past the test to the tutorial and other means of rewarding the user.

Re claims 15-19 have been discussed above.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rogan et al. (US 6,890,179 B2) teaches an electronic gaming for teaching others financial principles and lessons. The interactive game may be remotely access by users via a network such as the Internet. Holtz et al. (US 2002/0031756 A1) teaches a tutorial system and method for providing online media production lessons and other data to one or more students over a computer network.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kang Hu whose telephone number is (571)270-1344. The examiner can normally be reached on 8-5 (Mon-Thu).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KH
Kang Hu
June 21, 2007

Robert E Pezzuto
Supervisory Patent Examiner
Art Unit 3714